

ORDINANCE NO. 2001- 020

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PROHIBITING SELF-SERVICE DISPLAY AND PLACEMENT OF TOBACCO PRODUCTS; PROVIDING FOR RECITALS; PROVIDING FOR TITLE; PROVIDING FOR INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXCEPTION; PROVIDING FOR APPLICABILITY; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature has enacted laws, located in Chapter 569, Florida Statutes, that provide for increased regulation of the retail sale of tobacco products; and

WHEREAS, within Chapter 569, Florida Statutes, the Florida Legislature has provided for civil, administrative, and/or criminal penalties for the sale of tobacco products to a person under the age of 18 and for the possession of such tobacco products by a person under the age of 18; and

WHEREAS, the State of Florida has entered into a settlement agreement with the tobacco industry for billions of dollars to reimburse the State due to the prevalence of tobacco use; and

WHEREAS, the settlement agreement between the State of Florida and the tobacco industry provides for a pilot program which is aimed specifically at the reduction of the use of tobacco products by persons under the age of 18; and

WHEREAS, the U.S. Department of Health and Human Services has determined that every day 3,000 children become smokers and a third of them, eventually, will die from smoking-related illnesses. Smoking is this nation's leading preventable cause of death and kills more than 430,000 people a year; and

WHEREAS, surveys conducted by Students Working Against Tobacco in 1999 and 2000 of forty-three stores in Palm Beach County revealed that 79 percent have tobacco products located on, in front of and/or beside the counter and 21 percent have tobacco products located directly next to entrance ways; and

1 WHEREAS, Chapter 569, Florida Statutes, does not prohibit
2 local governments from regulating the placement of tobacco
3 products; and

4 WHEREAS, the United States Supreme Court has held in *Village*
5 *of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S.
6 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1981), that ordinances that
7 regulate the commercial marketing and display of items that may be
8 used for illegal purposes does not violate the First Amendment; and

9 WHEREAS, the Board of County Commissioners of Palm Beach
10 County, Florida, along with the citizens of Palm Beach County are
11 concerned about the use of tobacco products by persons under the
12 age of 18; and

13 WHEREAS, the Board of County Commissioners of Palm Beach
14 County, Florida, believes that a reduction in the availability,
15 both visually and physically, of tobacco products to persons under
16 the age of 18 will likely lead to a reduction in tobacco product
17 use by that age group; and

18 WHEREAS, the Board of County Commissioners of Palm Beach
19 County, Florida, finds that the regulation of tobacco product
20 placement will reduce the availability and desirability of tobacco
21 products to persons under the age of eighteen (18); and

22 WHEREAS, the Board of County Commissioners of Palm Beach
23 County, Florida, finds that such regulation is in the best interest
24 of the public health, safety and welfare.

25 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
26 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

27 SECTION 1. RECITALS.

28 The foregoing recitals are true and correct and incorporated
29 herein by reference.

30 SECTION 2. TITLE.

31 This Ordinance shall be known and cited as the Palm Beach
32 County Tobacco Product Placement Ordinance.

1 SECTION 3. INTENT.

2 This Ordinance is intended to prevent the sale to and
3 possession of tobacco products by persons under the age of 18 by
4 regulating the placement of such products. This Ordinance shall
5 not be interpreted or construed to prohibit the sale or delivery of
6 tobacco products which are otherwise lawful or regulated pursuant
7 to Chapter 569, Florida Statutes.

8 SECTION 4. DEFINITIONS.

9 For the purpose of this Ordinance the following terms shall
10 mean:

11 (a) *Business* means any sole proprietorship, joint venture,
12 corporation or other business formed for profit making or non-
13 profit purposes, including retail establishments where goods or
14 services are sold.

15 (b) *Person* means any individual, partnership, cooperative
16 association, private corporation, personal representative,
17 receiver, trustee, assignee or other legal entity.

18 (c) *Self-service display or placement* means the open display
19 or placement of tobacco products to which the public has access
20 without the intervention of the vendor, store owner or other store
21 employee.

22 (d) *Tobacco products* includes loose tobacco leaves, and
23 products made from tobacco leaves, in whole or in part, and
24 cigarette wrappers, which can be used for smoking, sniffing or
25 chewing.

26 (e) *Tobacco retailer* means any person or business that
27 operates or manages a store, stand, booth, concession or other
28 place at which sales of tobacco products are made to purchasers for
29 consumption or use.

30 (f) *Vendor assisted* means the customer has no access to
31 tobacco products without the assistance of the vendor, store owner
32 or other store employee.

33 (g) *Division* means the County Division of Consumer Affairs.

1 SECTION 5. SELF-SERVICE DISPLAY AND PLACEMENT PROHIBITED.

2 It shall be unlawful for any tobacco retailer to sell, permit
3 to be sold, offer for sale or display for sale any tobacco product
4 by means of self-service display or placement or by any other means
5 other than vendor assisted sales.

6 SECTION 6. EXCEPTION.

7 The provisions of this Ordinance shall not apply to an
8 establishment that prohibits persons under 18 years of age on the
9 premises.

10 SECTION 7. APPLICABILITY.

11 This Ordinance shall be applicable throughout the
12 unincorporated areas of the County. This Ordinance shall be
13 applicable within the incorporated areas of the County to the
14 extent that it does not conflict with the provisions of a municipal
15 ordinance.

16 SECTION 8 ENFORCEMENT AND PENALTIES.

17 (a) This Ordinance shall be enforced by personnel authorized
18 by the division, and law enforcement officers within their
19 respective jurisdictions.

20 (b) Any violation of this Ordinance is a civil infraction.

21 (c) Any tobacco retailer who has committed an act in
22 violation of this Ordinance shall receive a citation from the
23 division or any law enforcement officer who has reasonable cause to
24 believe that the tobacco retailer has committed a civil infraction
25 in violation of this Ordinance.

26 (d) The county court shall have jurisdiction over all
27 violations of this Ordinance.

28 (e) The county clerk shall:

29 (1) Accept designated fines and issue receipts
30 therefor.

31 (2) Provide a uniform citation form serially numbered
32 for notifying alleged violators to appear and
33 answer to charges of violation of this Ordinance.

1 Such citation forms shall be issued to and
2 receipted by the division.

3 (f) Violation of any provision of this Ordinance shall be
4 punishable by a fine not to exceed five hundred dollars (\$500.00).
5 Any tobacco retailer who has violated any provision of this
6 Ordinance shall be fined an amount as established by resolution of
7 the Board of County Commissioners.

8 (g) Any tobacco retailer issued a citation shall be deemed to
9 be charged with a civil violation and shall comply with the
10 directives on the citation.

11 (h) Payment shall be made, either by mail or in person, to
12 the violations bureau within the time specified on the citation.
13 If a tobacco retailer follows this procedure, he or she shall be
14 deemed to have admitted the infraction and to have waived his or
15 her right to a hearing on the issue of commission of the
16 infraction.

17 (i) All fines collected as a result of said citations (except
18 those fines collected as a result of citations issued by municipal
19 law enforcement officers, which shall be remitted by the clerk of
20 the court directly to the municipality issuing the citation) shall
21 be paid into the County treasury and deposited into an account
22 designated for use by the division.

23 (j) Any tobacco retailer who fails to make payment within the
24 specified period shall be deemed to have waived his or her right to
25 pay the civil penalty as set forth in the citation.

26 (k) Any tobacco retailer who elects to appear before the
27 court to contest the citation shall be deemed to have waived his or
28 her right to pay the civil penalty. The court, after a hearing,
29 shall make a determination as to whether a violation has occurred
30 and may impose a civil penalty not to exceed five hundred dollars
31 (\$500.00) plus court costs.

32 (l) If a tobacco retailer fails to pay the civil penalty, or
33 fails to appear in court to contest the citation, he or she shall
34 be deemed to have waived his or her right to contest the citation;
35 and in such case, a default judgment may be entered and the judge

1 shall impose a fine at that time. An order to show cause may be
2 issued. If the fine is paid, the case shall be dismissed. If the
3 fine is not paid, judgment may be entered up to the maximum civil
4 penalty.

5 (m) Any tobacco retailer cited for an infraction under this
6 Ordinance shall sign and accept the citation indicating a promise
7 to pay the fine or appear in court. Any tobacco retailer who
8 willfully refuses to sign and accept a citation issued by an
9 officer shall be guilty of a misdemeanor of the second degree,
10 punishable as provided by Florida Statute § 775.082 or 775.083, as
11 may be amended.

12 (n) The division may require mandatory court appearances for
13 violations resulting in the issuance of a third or subsequent
14 citation to a tobacco retailer. The citation shall clearly inform
15 the tobacco retailer of the mandatory court appearance. The
16 division shall maintain records to prove the number of citations
17 issued to the tobacco retailer. Tobacco retailers required to
18 appear in court do not have the option of paying the fine instead
19 of appearing in court.

20 (o) Failure to comply with the requirements of this Ordinance
21 shall constitute a violation of a County ordinance, and shall be
22 punishable, upon conviction, pursuant to Florida Statutes,
23 §125.69(1), by a fine not to exceed five hundred dollars (\$500.00)
24 per violation or imprisonment not exceeding sixty (60) days, or
25 both such fine and imprisonment. In addition to the sanctions
26 contained herein, the County shall take any other appropriate legal
27 action, including, but not limited to, cease and desist orders,
28 other administrative action and requests for temporary and
29 permanent injunctions to enforce the provisions of this Ordinance.
30 It is the purpose of this Ordinance to provide additional
31 cumulative remedies. Each violation of this Ordinance, and each
32 day in which a continuing violation of this Ordinance exists, shall
33 constitute a separate offense.

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SECTION 10. SEVERABILITY.

SECTION 11. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

SECTION 12. EFFECTIVE DATE.

APPROVED and ADOPTED by the Board of County Commissioners of
Palm Beach County, Florida, on this the 15th day of
May, 2001.

By: Deborah A. Price COUNTY By: Warren H. Newell
Deputy Clerk FLORIDA Chairman

By: Franklin
County Attorney

t:wp8/pbccad/tobacco/tobaord2.wpd

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on May 15, 2001
DATED at West Palm Beach, FL on 5/30/01
DOROTHY H. WILKEN, Clerk
By: Diane Brown D.C.